

ASSEMBLY, No. 187

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman HAROLD "HAL" J. WIRTHS

District 24 (Morris, Sussex and Warren)

Assemblyman PARKER SPACE

District 24 (Morris, Sussex and Warren)

SYNOPSIS

Permits business entities and nonprofit organizations to adopt certain responsibilities related to stormwater management basins; provides corporation business tax credit for adoption of stormwater management basins in certain watersheds.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning stormwater management basins and
2 supplementing Title 40 of the Revised Statutes and P.L.1945,
3 c.162 (C.54:10A-1 et seq.).
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

8 1. This act shall be known and may be cited as the “Adopt a
9 Stormwater Management Basin Act.”
10

11 2. As used in this act:

12 “Participating entity” means a business entity or nonprofit
13 organization that has entered into a stormwater management basin
14 adoption agreement with a stormwater management agency in
15 accordance with this act.

16 “Qualified watershed” means the respective watersheds of Lake
17 Hopatcong in Morris and Sussex counties, Budd Lake in Morris
18 County, Swartswood Lake in Sussex County, Greenwood Lake in
19 Passaic County, and Lake Musconetcong in Morris and Sussex
20 Counties.

21 “Stormwater management agency” means the State, or any
22 political subdivision thereof, including, but not limited to, any
23 department, county, municipality, commission, utility, or authority,
24 or any agency thereof, that has ownership or control over a
25 stormwater management basin or a site suitable therefor.

26 “Stormwater management basin” means an excavation or
27 embankment and related areas designed to retain stormwater runoff,
28 which may be either a detention or infiltration basin that is normally
29 dry, a retention basin that retains water in a permanent pool, or an
30 area of constructed wetlands that is planted mainly with wetland
31 vegetation.

32 “Stormwater management basin adoption agreement” means an
33 agreement between a stormwater management agency and a
34 business entity or nonprofit organization by which the business
35 entity or nonprofit organization agrees to provide for the
36 construction, improvement, operation, or maintenance of a
37 stormwater management basin over which the stormwater
38 management agency has ownership or control, or to provide a
39 specified amount of funding therefor in a manner prescribed by the
40 agreement, as the case may be.
41

42 3. a. A stormwater management agency that owns or has
43 control over an existing stormwater management basin or a site
44 suitable therefor may enter into a stormwater management basin
45 adoption agreement that imposes no cost on the stormwater
46 management agency except as provided pursuant to section 4 of this
47 act.

1 No stormwater management basin adoption agreement may be
2 entered into unless the participating entity successfully
3 demonstrates to the stormwater management agency that the
4 participating entity is capable of constructing, improving, operating,
5 maintaining, or funding the stormwater management basin, as the
6 case may be, in accordance with the agreed upon terms and
7 conditions and with all State and federal laws, rules, and regulations
8 pertaining to stormwater management. A stormwater management
9 basin adoption agreement shall be for such period as may be agreed
10 upon by the stormwater management agency and the participating
11 entity, and may be terminated by the participating entity upon at
12 least six months' notice to the stormwater management agency, or
13 by the stormwater management agency at any time without prior
14 notice to the participating entity, for any reason, including, but not
15 limited to, failure of the participating entity to comply with any
16 term or condition of the stormwater management basin adoption
17 agreement.

18 b. Nothing in this act shall be deemed to relieve a stormwater
19 management agency of its responsibilities to comply with the
20 conditions and requirements of any permit issued by the
21 Department of Environmental Protection concerning stormwater
22 management.

23
24 4. A stormwater management agency may:

25 a. provide at no cost to a participating entity materials,
26 supplies, or services that the stormwater management agency deems
27 appropriate to assist the participating entity with its responsibilities
28 under the stormwater management basin adoption agreement;

29 b. advertise and promote a stormwater management basin
30 adoption program established by the stormwater management
31 agency pursuant to this act; and

32 c. provide for appropriate public recognition of a participating
33 entity, including, but not limited to:

34 (1) issuance of a certificate of recognition; and

35 (2) authorization for the participating entity to pay for and erect
36 a sign or signs at the applicable stormwater management basin,
37 consistent with any applicable municipal ordinance, indicating the
38 name and address of the participating entity, and that the
39 participating entity has assumed those responsibilities performed
40 pursuant to the stormwater management basin adoption agreement
41 as a public service in accordance with this act. The stormwater
42 management agency shall determine the size, color, style, and
43 location of any such sign or signs that may be erected. A
44 stormwater management agency may pay for a sign or signs erected
45 in accordance with this paragraph if the participating entity is a
46 nonprofit organization.

1 5. a. Except as provided in the “New Jersey Tort Claims Act,”
2 N.J.S.59:1-1 et seq., no stormwater management agency, or any
3 employee or agent thereof, may be held liable in any civil action to
4 any person for any injury or damages that may be caused or
5 sustained by any participating entity, or any employee, agent,
6 contractor, member, or volunteer thereof, during the course of, or as
7 a result of, any activity related to the performance of a stormwater
8 management basin adoption agreement.

9 b. As a condition of any stormwater management basin
10 adoption agreement entered into in accordance with this act:

11 (1) a participating entity, and each employee, agent, contractor,
12 member, or volunteer of that participating entity assisting in
13 performance of the stormwater management basin adoption
14 agreement, shall sign a waiver releasing the stormwater
15 management agency and its employees and agents from any civil
16 liability for any injury or damages, except those arising from
17 criminal or willful, wanton, or grossly negligent conduct, that may
18 be sustained by the participating entity, or any employee, agent,
19 contractor, member, or volunteer thereof, as the case may be, during
20 the course of, or as a result of, any activity related to the
21 performance of the stormwater management basin adoption
22 agreement;

23 (2) a participating entity shall agree to indemnify, and if
24 requested by the stormwater management agency, defend, the
25 stormwater management agency and its employees and agents
26 against all claims made by any person for injuries or damages that
27 may be caused or sustained by the participating entity, or any
28 employee, agent, contractor, member, or volunteer thereof, during
29 the course of, or as a result of, any activity related to the
30 performance of a stormwater management basin adoption
31 agreement; and

32 (3) a participating entity shall obtain and retain insurance in an
33 amount sufficient for the purposes set forth in this section.
34

35 6. While performing responsibilities pursuant to a stormwater
36 management basin adoption agreement entered into in accordance
37 with this act, a participating entity and its employees, agents,
38 contractors, members, and volunteers shall not be considered to be
39 “public employees” or “State employees” for the purposes of the
40 “New Jersey Tort Claims Act,” N.J.S.59:1-1 et seq., or otherwise be
41 accorded any of the protections set forth therein.
42

43 7. A stormwater management basin adoption agreement entered
44 into in accordance with this act shall not be subject to the
45 requirements and provisions of the “Local Public Contracts Law,”
46 P.L.1971, c.198 (C.40A:11-1 et seq.).

1 8. a. A taxpayer who provides materials, supplies, labor, or
2 funding, or who incurs other costs, including, but not limited to,
3 increased costs for insurance, for the adoption of a stormwater
4 management basin located in a qualified watershed, as that term is
5 defined in section 1 of P.L. , c. (C.) (pending before the
6 Legislature as this bill), pursuant to a stormwater management basin
7 adoption agreement entered into in accordance with this act, which
8 is certified by a stormwater management agency pursuant to
9 subsection b. of this section, shall be entitled to a credit as provided
10 herein against the tax imposed pursuant to section 5 of P.L.1945,
11 c.162 (C.54:10A-5), in an amount equal to 100 percent of the
12 taxpayer's total certified expenditures, or \$1,000, whichever is
13 lower, provided, however, the credit shall not exceed 50 percent of
14 the tax liability otherwise due pursuant to section 5 of P.L.1945,
15 c.162 (C.54:10A-5). The order of priority of application of a tax
16 credit under this section and any other tax credits allowed by law
17 shall be as prescribed by the Director of the Division of Taxation.

18 b. In order to qualify for the tax credit pursuant to subsection a.
19 of this section, the taxpayer shall apply for and obtain a certification
20 from the stormwater management agency that certifies that the
21 taxpayer was a participating entity for the applicable privilege
22 period and that the stormwater management basin is located in a
23 qualified watershed. The certification shall indicate the date when
24 the taxpayer became a participating entity, include a copy of the
25 stormwater management basin adoption agreement, and state, to the
26 best of the stormwater management agency's knowledge, that the
27 materials, supplies, labor, or other costs incurred by the taxpayer, or
28 the funding provided by the taxpayer, have been expended by the
29 taxpayer and have not previously qualified for and received a credit
30 pursuant to this section.

31 Upon certification, the stormwater management agency shall
32 submit a copy thereof to the taxpayer and to the Director of the
33 Division of Taxation in the Department of the Treasury. When
34 filing a tax return that includes a claim for a credit pursuant to this
35 section, the taxpayer shall include a copy of the certification and a
36 statement that the expenditures certified therein were incurred in the
37 applicable privilege period. Any credit shall be valid in the
38 privilege period in which the certification is approved, and any
39 unused portion thereof may be carried forward for up to four
40 subsequent privilege periods.

41 c. The Director of the Division of Taxation, in consultation with
42 the Commissioner of Environmental Protection, shall adopt rules
43 and regulations, pursuant to the "Administrative Procedure Act,"
44 P.L.1968, c.410 (C.52:14B-1 et seq.), establishing technical
45 specifications and certification requirements for qualification for
46 the tax credit established pursuant to this section.

1 thereof, during the course of, or as a result of, any activity related to
2 the performance of a stormwater management basin adoption
3 agreement.

4 While performing responsibilities under a stormwater
5 management basin adoption agreement entered into in accordance
6 with the bill, a participating entity and its employees, agents,
7 contractors, members, and volunteers would not be considered to be
8 “public employees” or “State employees” for the purposes of the
9 “New Jersey Tort Claims Act,” or otherwise be accorded any of the
10 protections set forth therein. Furthermore, any stormwater
11 management basin adoption agreement entered into in accordance
12 with this bill would not be subject to the requirements and
13 provisions of the "Local Public Contracts Law."

14 Finally, the bill would provide a tax credit against the
15 corporation business tax for a participating entity that adopts a
16 stormwater management basin located in a qualified watershed.
17 Under the bill a “qualified watershed” means the respective
18 watersheds of Lake Hopatcong in Morris and Sussex counties, Budd
19 Lake in Morris County, Swartswood Lake in Sussex County,
20 Greenwood Lake in Passaic County, and Lake Musconetcong in
21 Morris and Sussex Counties. Specifically, the tax credit would be
22 equal to the amount of the participating entity’s certified
23 expenditures incurred under a stormwater management basin
24 adoption agreement, provided, however, the credit could not exceed
25 \$1,000 or 50 percent of the taxpayer’s total tax liability under the
26 corporation business tax. The bill also establishes procedures by
27 which a taxpayer may apply for the tax credit, including certain
28 requirements related to the certification of eligible expenditures.